

Don't Get Clobbered: Assault and Battery Coverage Pitfalls

In the movies, any time a hero walks into a bar you know there's a good chance a fight will break out. While the odds of a fight at a real bar are much lower than in Hollywood, fights do occur at bars, nightclubs, motels and restaurants. Assault and battery coverage is perhaps the most important coverage issue for these establishments, and when a client owns a business in the hospitality industry, it must always be considered. If a patron or an employee gets into an altercation with another patron, the result could be a lawsuit against the establishment's owner. Assault and battery insurance provides coverage for costs such as medical expenses, pain and suffering, mental anguish and legal fees, which are typically associated with defending these types of claims.

Although it may seem obvious, the first key to avoiding an errors and omissions claim relating to assault and battery coverage is to know your client and your client's need for the coverage. This type of coverage is essential not only for bars and nightclubs but also for restaurants, hotels and other hospitality industry businesses.

Assault and battery coverage can be expensive and difficult to find. Most general liability policies written for hospitality establishments contain a complete exclusion for assault and battery, particularly for new businesses and businesses with prior assault and battery losses. Other policies may have a partial exclusion for assault and battery covering only acts of patrons, for example. Defense costs are typically within the limits for these types of claims such that defense erodes the indemnity limits. Or, there may be a sublimit for assault and battery that's lower than the policy limit. Make sure your client is aware of these limitations. If you're unable to procure assault and battery coverage or your client is unwilling to purchase such coverage, be sure to document in writing that you've advised your client and he is aware he has no such coverage.

Providing a complete and accurate loss history to the carrier is critical. If the carrier later discovers incidents it feels should have been disclosed, it may be able to rescind the policy, leaving your customer with no coverage at all. Additionally, all applications submitted should be completed and signed by the client.

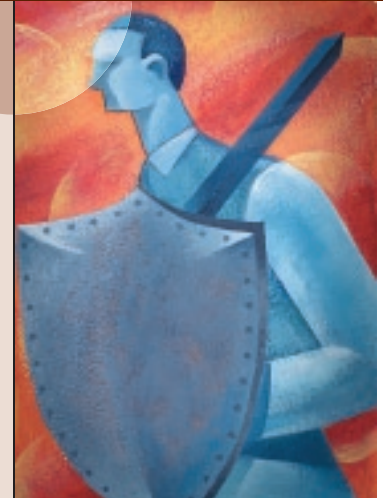
Certificates of insurance also raise issues for agents. Every time an agency receives a request for a certificate of insurance verifying assault and battery coverage, determine that such coverage is actually in place before issuing a certificate. After the loss, the policyholder is generally going to allege a belief that they had assault and battery coverage, especially if they can base that belief on a certificate of insurance produced by the agency. A certificate will make credible evidence for the establishment and unfavorable evidence for the agency if it contains false or inaccurate information.

Often, a client won't claim it wanted this type of coverage until after an assault and battery claim is made and denied. Or, the client will say it believed such coverage was in place. When there's no coverage for a claim, clients and their lawyers begin to look for another pocket to absorb the loss and it doesn't take long before the insurance agent is in the lawyer's sights.

Next time the hero gets tossed out the front window of the saloon, protect yourself from an errors and omissions claim by making sure the saloon has the proper coverage in place. **IA**

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Manage the Risk

Here are some risk management tips to keep in mind when dealing with assault and battery coverage:

- Know the nature of the client's business and potential exposures.
- Always get a copy of the expiring policy.
- Make sure a full and accurate loss history is disclosed to the carrier.
- Make sure all applications are fully completed and signed by the client.
- Have the client sign off on the coverage that was requested, especially if assault and battery coverage is declined.
- Read the policy that was issued and confirm that policy was issued as requested.
- Deliver the policy to the client in a timely manner.
- Ensure that any policy summaries prepared by the agency are accurate and highlight sublimits, etc.

—K.T.